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May 8, 2023

**Via ECF**

The Honorable Katherine Polk Failla, U.S.D.J.

United States District Court

Southern District of New York

500 Pearl Street

New York, NY 10007

**MEMO ENDORSED**

Re: *Zhao v. Surge Private Equity LLC, et al*  
Case No. 22-cv-07314

Dear Judge Failla:

We are counsel to Plaintiff in the above-referenced matter, and write to correct the multiple misstatements made by Defendants in their response to Plaintiff's letter motion [ECF 27].

*First*, Defendants contend that Plaintiff did not "in any way" confer with Defendants in good faith and "failed to notify Defendants; counsel they were going to file a letter requesting the Court's intervention." This is simply false. Plaintiff conferred with Defendants, in good faith, twice, on April 5, 2023 and again on April 18, 2023, about the exact same issues stated in Plaintiff's letter and notified Defendants that if Defendants' non-cooperation persists, Plaintiff will be forced to seek the Court's intervention.

*Second*, Defendants mistakenly describe the class-related discovery as "informal". Plaintiff formally served requests for class discovery on December 16, 2022, in Plaintiff's First Request for Production of Documents. Defendants have been delaying discovery production for five months. Therefore, Defendants' characterization of Plaintiff's letter to the court as an exercise of "impatience" is inaccurate.

*Third*, although it is true that the Parties scheduled another meet & confer, Defendants canceled it less than an hour before the scheduled meeting, and stopped responding to Plaintiff's multiple attempts to reschedule. Plaintiff emailed Defendants on April 25, 2023, and April 26, 2023, and attempted to call Defendants counsel twice, to no avail.

In view of the foregoing and for the reasons stated in Plaintiff's Letter Motion, Plaintiff respectfully requests the Court compel Defendants be compelled to produce class discovery, e-discovery, identify the 30(b)(6) representatives for the Corporate Defendants and confirm deposition dates.

We thank the Court for its time and consideration.

Respectfully submitted,

/s/ C.K. Lee  
C.K. Lee, Esq.

cc: all parties via ECF

The Court is in receipt of Plaintiff's letter motion to compel (Dkt. #27), Defendants' opposition (Dkt. #30), and Plaintiff's above reply (Dkt. #32). In their opposition, Defendants have not represented that they are opposed to any of Plaintiff's requested discovery; rather, Defendants appear to suggest that the parties had been previously working together in good-faith to respond to certain requests. As such, the Court does not believe that its intervention is necessary at this time.

However, the Court notes that despite the longer-than-usual discovery schedule in this case, the Court expects the parties to continue working through discovery productively. Thus, the Court does not condone Defendants' failures to respond to Plaintiff's requests. The same is true of Defendants' failures to reschedule meet and confer sessions. Had Defendants simply responded to Plaintiff's correspondence, the Court does not believe that this letter motion would have been filed.

Accordingly, Plaintiff's letter motion to compel is DENIED. Should Defendants continue to be non-responsive, Plaintiff may renew its request after meeting and conferring with Defendants, at which point in time the Court will be inclined to grant Plaintiff's requested relief.

The Clerk of Court is directed to terminate the pending motion at docket entry 27.

Dated: May 8, 2023  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE